

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WARREN THOMAS,

Petitioner,

-against-

MARK ROYCE,

Respondent.

19-CV-6781 (CM)

ORDER

COLLEEN McMAHON, Chief United States District Judge:

By order dated August 28, 2019, the Court directed Petitioner to show cause why his petition for a writ of *habeas corpus* should not be denied as time-barred. (ECF No. 5.) After Petitioner failed to respond to that order, the Court denied the petition. (ECF No. 6.) On November 26, 2019, the Court issued an order to reopen the action, after receiving a letter from Petitioner notifying the Court that he was unable to respond to the August 28, 2019 order in a timely fashion. (ECF No. 9.) The Clerk of Court mailed the November 26, 2019 order on November 27, 2019. Five days later, on December 2, 2019, Petitioner prepared a notice of appeal and a motion for an extension of time to file an appeal, which the Court received on December 17, 2019. (ECF Nos. 10-11.) The Court granted the motion for an extension of time (ECF No. 12), and the Clerk of Court transmitted the appeal to the Court of Appeals on December 18, 2019.

The Court is now in receipt of Petitioner's response to the August 28, 2019 order, received by the Court on January 27, 2020. (ECF No. 13.) But the Court no longer has jurisdiction over this action, as Petitioner's case is now on appeal. *See Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) ("The filing of a notice of appeal is an event of jurisdictional significance – it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal."). Because Petitioner's

appeal divests this Court of jurisdiction over the action, the Court cannot consider Petitioner's response to the August 28, 2019 order until his appeal proceedings are closed.

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Petitioner and note service on the docket.

The Clerk of Court is further directed to deliver a copy of this order to the Clerk of the United States Court of Appeals for the Second Circuit.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444–45 (1962).

SO ORDERED.

Dated: January 29, 2020
New York, New York



COLLEEN McMAHON
Chief United States District Judge